Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   CNR, RP, RR, OLC
                    OPR-DR, OPRM-DR, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the "*Act*"). The matter was set for a conference call.

The Tenants' Application for Dispute Resolution was made on December 23, 2020. The Tenants applied to cancel a 10-Day Notice for Unpaid Rent and Utilities (the "Notice") issued December 22, 2020, for an order for the Landlord to comply with the *Act*, for an order for the Landlord to make repairs to the unit, site or property, and for a rent reduction.

The Landlords' Application for Dispute Resolution was made on January 12, 2021. The Landlords are requesting an order of possession to enforce a 10-Day Notice for Unpaid Rent and Utilities (the "Notice") issued December 22, 2020, for a monetary order for unpaid rent and to recover the filing fee paid for this application.

Both Landlords and both Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Tenants and the Landlords were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

<u>Preliminary Matters- Related Issues</u>

I have reviewed the Tenants' application, and I note that they have applied to cancel a Notices to end tenancy as well as for several other issues. I find that some of these other issues are not related to the Tenant's request to cancel the Notice. As these other matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

> **2.3 Related issues**
> Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Therefore, I am dismissing with leave to reapply the Tenants claims for an order for the Landlord to comply with the *Act*, for an Order for the Landlord to make regular repairs to the rental unit and for a rent reduction.

<u>Issues to be Decided</u>

- Should the Notice to End Tenancy issued December 22, 2020, be cancelled?
- If not, are the Landlords entitled to an order of possession pursuant to section 55 of the Act?
- Are the Landlords entitled to a monetary order for unpaid rent and utilities?
- Are the Landlords entitled to the return of his filing fee?

<u>Background and Evidence</u>

The tenancy agreement records that this tenancy began on October 15, 2020. Rent in the amount of $1,950.00 is to be paid by the first day of each month, and the Landlords are holding a $975.00 security deposit and a $500.00 pet damage deposit for this tenancy.

The Landlords testified that they served the 10-Day Notice to the Tenants on December 22, 2022, by Canada Post registered mail. The 10-Day Notice recorded an effective date of December 29, 2020, and an outstanding rent amount of $1,950.00. for the December 2020 rent.

The Landlords testified that the Tenants paid the rent for December in two instalments, the first on January 3, 2021, in the amount of $1,500.00 and the second on January 7, 2021, in the amount of $450.00.

The Landlords testified that as of the date of these proceedings, the Tenants were outstanding in rent in the amount of $2,680.00, consisting of $730.00 for February 2021 and $1,950.00 for March 2021.

The Tenants testified that they had paid the rent for December 2020, in two instalments, the first on January 3, 2021, in the amount of $1,500.00 and the second on January 8, 2021, in the amount of $450.00.

The Landlords are requesting that the Notice be enforced, as the Tenants did not pay the outstanding rent for December 2020 within five days of receiving the Notice to end tenancy, and they are requesting a monetary order for the current outstanding rent.

Analysis

Based on the above, the oral testimony and the documentary evidence, and on a balance of probabilities, I find as follows:

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent, a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

> ***Landlord's notice: non-payment of rent***
> > ***46*** *(1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.*

(2) A notice under this section must comply with section 52 [form and content of notice to end tenancy].
(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
(4) Within 5 days after receiving a notice under this section, the tenant may
> *(a) pay the overdue rent, in which case the notice has no effect, or*
> *(b) dispute the notice by making an application for dispute resolution.*

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
> *(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*
> *(b) must vacate the rental unit to which the notice relates by that date.*

I find that the Tenants were deemed to have received the 10-Day notice on December 27, 2020, five days after it was mailed to them, pursuant to section 90 of the Act.

I accept the agreed-upon testimony of both parties that the Tenants had not paid the outstanding rent as stated on the 10-Day Notice within the required five days after receiving this Notice. Consequently, I find that the Tenants were in breach of section 26 of the Act by not paying the rent in accordance with the tenancy agreement, and I dismiss the Tenants' application to cancel the 10-Day Notice.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord, and the tenant's request to dispute the notice is dismissed. Section 55(1) of the *Act* states as follows:

> **Order of possession for the landlord**
> **55(1)** *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*
> > *(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
> > *(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

I have reviewed the Notice to end the tenancy, and I find the Notice complies with section 52 of the *Act*.

Therefore, I find that the Landlords are entitled to an order of possession pursuant to section 55 of the *Act*. I grant the Landlord an **Order of Possession** effective **two days** after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that the costs of such enforcement are recoverable from the tenant.

I also accept the agreed-upon testimony of these parties that as of the date of these proceedings, there is $2,680.00 in outstanding rent for this tenancy. I find that the Landlords have proven their entitlement to a monetary award in the amount of $2,680.00 for the outstanding rent for this tenancy. I grant permission to the Landlords to retain the security and pet damage deposits for this tenancy in partial satisfaction of this award.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the $100.00 filing fee paid for his application.

I grant the Landlords a monetary order in the amount of $1,305.00, consisting of $2,680.00 in unpaid rent, $100.00 for the recovery of the filing fee, less the security deposit of $975.00 and the pet damage deposit of $500.00 that the Landlord is holding for this tenancy.

Conclusion

The Tenants' application is dismissed.

I find for the Landlords pursuant to sections 46, 67 and 72 of the Act.

I grant an **Order of Possession** to the Landlords effective **two days** after service on the Tenants. The Tenants must be served with this Order. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant the Landlords a **Monetary Order** in the amount of **$1,305.00** for the outstanding rent and the recovery of the filing fee for this application, less the deposits the Landlords are holding. The Landlords are provided with this Order in the above terms, and the Tenants must be served with this Order as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 22, 2021

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Residential Tenancy Branch